

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

April 7, 2016

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Chairwoman Ramirez:

We write today to urge the Federal Trade Commission (“FTC” or the “Commission”) to initiate an investigation into the advertising practices of a recently formed non-profit corporation called *Protect America’s Consumers* (the “Corporation”). Specifically, the Corporation has intentionally used our quotes out of context for the express purpose of distorting our opinions regarding a federal agency – namely, the Consumer Financial Protection Bureau (“CFPB” or the “Bureau”).

As sitting Members of Congress, we have taken, and are currently under, oaths to support and defend the Constitution of the United States. Our sworn pledges unreservedly include a defense of the first amendment which protects freedom of speech, and since the Supreme Court’s ruling in the *Citizens United* case also includes essentially unlimited independent political expenditures by non-profit corporations.¹ However, notwithstanding our wholehearted support for the First Amendment, the Supreme Court has previously held that even speech that enjoys the most extensive First Amendment protection may be restricted on the basis of content.² It is this understanding – that even free speech may be appropriately restricted – that predicates our concern with the advertising tactics used by *Protect America’s Consumers*.

The Corporation – according to its own website – is “organized as a non-profit corporation under Section 501(c)(4) of the Internal Revenue Code.”³ According to regulations set forth by the Department of Treasury, these tax-exempt social welfare organizations must be “primarily engaged in promoting in some way the common good and general welfare of the people in the community.”⁴ The explicit purpose of the Corporation is to induce U.S. citizens and residents to contact elected officials and urge reform of the CFPB. Nevertheless, it is readily apparent, based upon the Corporation’s website and its advertisements, that the objective of its advertising is to reduce the independence and hinder the effectiveness of a federal consumer protection regulator, and more importantly undermine, *in toto*, taxpayers’ confidence in the federal agency. This is a nakedly partisan issue, with clear divisions between the Democratic and Republican Members of Congress on the issue of sustaining the

¹ *Citizens United v. Federal Election Commission*, 552 U.S. 310 (2010).

² See e.g., *Sable Communications of California, Inc. v. Federal Communications Commission*, 492 U.S. 115, 126 (1989).

³ *Protect America’s Consumers*, Make a Donation, <https://www.protectconsumers.com/donate/>.

⁴ Treas. Reg. §1.501(c)(4)-1(a)(2).

independence of the Bureau and the importance of maintaining trust in the agency. And, were this simply an issue of potentially improper political expenditures, this letter might be directed to the Internal Revenue Service to conduct a review of the Corporation's tax-exempt status.⁵

Unfortunately though, the Corporation has gone further by intentionally and explicitly identifying, out-of-context, partial quotes we have made in defense of the Bureau – both on its website and in its TV and Internet advertisements – in an effort to create *de facto* endorsements by Members of Congress in support of its attempts to undermine and ultimately dismantle the Bureau.⁶ The Corporation is likewise soliciting donations based, at least in part, on these apocryphal endorsements. It is our understanding that according to regulations promulgated by the Commission, endorsements “*must* reflect the honest opinion, findings, beliefs, or experience of the endorser.”⁷ Moreover, the regulations also make clear that “the endorsement may not be presented out of context or reworded so as to distort in any way the endorser’s opinion”.⁸ Indeed, whereas here, if after investigation, the advertising practices are found to be inconsistent with the regulations and guidance promulgated by the Commission, corrective action may be taken under Section 5 of the FTC Act (15 U.S.C. §45).⁹

As elected officials, we are public figures whose identities and credibility form the basis upon which we are able to effectively represent our constituents and execute our duties in the legislative branch. If misleadingly-named, tax-sheltered, secretly-funded corporations are able to use our public quotes to intentionally deceive the public regarding our policy positions in widespread advertising campaigns, such conduct would not only openly flout Commission regulations, it would also imperil the frankness with which elected officials communicate publically and, most disturbingly, could have a serious chilling effect on the discourse required for meaningful debate in the Congress. We therefore call upon the Commission to expeditiously and thoroughly investigate the advertising tactics used by the *Protect America's Consumers* Corporation, for potential violations of Section 5 of the FTC Act.

We thank you for your attention to this important matter. If you have any questions regarding this request, please contact Amanda Fischer of the Committee on Financial Services, Gregg Orton of Congressman Green's office, or Carol Wayman of Congressman Ellison's Office.

⁵ See e.g., Priv. Ltr. Rul. 201221025 (Mar. 2, 2012) (with the IRS ruling that an organization that primarily benefits partisan interests may jeopardize its 501(c)(4) status); see also, *American Campaign Academy v. Comm'r of the IRS*, 92 T.C. 1053 (1989) (holding that an organization that operates for the benefit of private interests, such as members and entities of one political party, on a more than insubstantial basis, may not qualify for 501(c)(3) status).

⁶ *Protect America's Consumers, Democrats and Republicans Agree*, <https://www.protectconsumers.com/#about> (quoting, *inter alia*, Reps. Maxine Waters, Al Green, and Keith Ellison); see also, Isaac Arnsdorf, *More Anti-CFPB Shenanigans*, POLITICO INFLUENCE, Jan. 7, 2016, <http://www.politico.com/tipsheets/politico-influence/2016/01/more-cfpb-shenanigans-212055>, (“The organization’s website, in a bid to present bipartisan support, displays quotes from Democratic Members of Congress – Reps. Maxine Waters (D-Calif.), Al Green (D-Texas), and Keith Ellison (D-Minn.) – appearing to criticize the CFPB. All three members told [Politico Influence] they were displeased to discover their words taken out of context and used to misrepresent their views on the agency, which they support. The full quotations reveal that all three officials were defending the CFPB from being singled out for criticism.”).

⁷ 16 C.F.R. §255.1(a) (2011) (emphasis added).

⁸ 16 C.F.R. §255.1(b) (2011).

⁹ 16 C.F.R. §255.0(a) (2011).

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Sincerely,



The Honorable Maxine Waters
Ranking Member
Committee on Financial Services



The Honorable Al Green
Ranking Member
Subcommittee on Oversight and
Investigations



The Honorable Keith Ellison
Member
Committee on Financial Services